ATTACHMENT 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	No. 02 B 48191
UAL CORPORATION, et al.,	)	
	)	Chicago, Illinois
	)	May 10, 2005
Debtors.	)	10:30 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:
MR. JAMES SPRAYREGEN
MR. TODD GALE
MR. ALEX DIMITRIEF
on behalf of the debtors;

MR. FRANK CITERA
on behalf of the city of Chicago;
MR. JEFFREY COHEN
on behalf of the PBGC;

MR. FRUMAN JACOBSON
on behalf of the creditors committee;
MR. BRUCE SIMON,
on behalf of the Air Line Pilots Association;

MR. ROBERT CLAYMAN
on behalf of the Association of Flight Attendants;
MR. LEE SEHAM
on behalf of the Aircraft Mechanics Fraternal
Association;
MR. JACK CARRIGLIO
MR. FRANK CUMMINGS
on behalf of the Retired Pilots;
MR. PAT HERRINGTON
on behalf of IFS;

MR. BILL SMITH
on behalf of the Bank of New York;

MS. SHARON LEVINE
on behalf of the International Association of Machinists and Aerospace Workers.

THE CLERK: UAL Corporation, 02 B 48191.

MR. SPRAYREGEN: Good morning, Judge Wedoff. James Sprayregen from Kirkland & Ellis on behalf of the debtors. Your Honor, you had -- someone had contacted our office about the Chicago municipal bond omnibus. I don't know if you wanted to -- no omnibus, but some questions on that. Did you want to handle that at a different time?

THE COURT: No. That should take very little time, and we can take care of that at the beginning of today's hearing. But before we do, there are a couple of things I wanted to say. The first is that I can easily understand the great interest that employees of United have in today's proceeding. And I want to let you know that I wanted to make it possible for everyone to hear what was going on in today's proceedings. We made arrangements to get the largest courtroom available, that is this courtroom. The single largest courtroom in the building was not available because it's used for immigration and naturalization matters, and that was previously reserved for that purpose. I am very grateful to the staff of the district court for making facilities available to let as many people be present in this courtroom and to allow the people who

would not fit in this courtroom to be able to hear today's proceedings.

It's also very important, obviously, that the attorneys who are representing all of the parties, including the employees, be able to move through the courtroom and consult with one another. So to the extent that anyone had to leave this courtroom to make room for those attorneys, I'm sorry that that was required. But I think you can understand why it was necessary. And, again, I'm happy, as I understand it, that everyone who wishes to hear these proceedings will be able to hear them.

We're going to take up arguments on the debtors' motion to enter into a settlement with the Pension Benefit Guaranty Corporation in just a second. But as Mr. Sprayregen said, there is a matter that involves the city of Chicago and the enforcement of certain payment obligations regarding bonds issued by the city that needs to be addressed first.

MR. GALE: Good morning, Your Honor. Todd Gale for the debtors.

MR. CITERA: Good morning, Your Honor. Frank Citera here on behalf of the city of Chicago.

THE COURT: My question is really going to

Mr. Citera. In reviewing the briefs that the parties had submitted on United's pending motion for judgment on the pleadings, it became very apparent that a major argument made by the city was that judgment on the pleadings was inappropriate because the city wanted to introduce evidence on the relationship between the airport use agreement and the special facilities agreement. Now, if the city still wants to present evidence on that point, I would like to know what the evidence is that you want to present and schedule a hearing to let you present it.

MR. CITERA: Well, Your Honor, I think that more appropriately what -- as we've pointed out in our motion, and I believe correctly pointed out in our motion, 12(c) is an inappropriate vehicle to deal with this particular issue, particularly based on the pleadings as presented to the court, and including, and most specifically, the complaint of United, which is barren of essentially any facts.

While it's true that the city has pointed out in its motion that it would like to introduce evidence, I mean, that evidence has to be framed, in our view, more appropriately by whatever issues United raises. I mean, if United wishes to file a Rule 56 motion and comply with the obligations

creditors committee.
THE COURT: Thank you.
According to the schedule that Mr. Sprayregen outlined at the outset of our proceedings today, it would be the IAM that would go next.
MR. CLAYMAN: Your honor, by agreement, I think the AFA is going to --
THE COURT: That's fine, Mr. Clayman.
MR. CLAYMAN: Robert Clayman for the Association of Flight Attendants.
Your Honor, also by agreement, United has agreed to extend my time another five minutes to 25 minutes if need be. I will try to stick to the 20 minutes, but I think I may need a little more time.
THE COURT: That's fine.
MR. CLAYMAN: Your Honor, I appreciate that Mr. Sprayregen took the time to explain how we got here. I would suggest, however, that the Association of Flight Attendants perspective on how we got here is somewhat, if not drastically, different than the company's.
This Section 1113 process, which is, in fact, scheduled to begin the hearing tomorrow, was well under way as provided by law, by judicial

decree, the scheduling order, and by our contract, which required United to meet and confer with us about the pension termination issue --
The question that really needs to be asked is what happened. Well, I think Mr. Sprayregen, in so many words, said it, which is that United simply grew tired of the 1113 process. That I think one only need to refer to a draft press release of April 30th to understand exactly what happened with regard to United.
And what it says there, and it's quoting Mr. Brace in his deposition, he agreed that this was still an accurate statement, it says: Our first choice was always to resolve pension issues consensually with all of the unions.
Unfortunately, despite exploring numerous alternatives over the past many months, no viable, alternative solutions were offered for a fact.
So United, on its own, and without any allegiance to the law, decided that there was a second choice, and it decided to go down a path that is not plotted by the Bankruptcy Code or any other statute.
And what it went on to say in this

indicates quite clearly exactly what United did. It states that United was, however, able to reach an agreement with the PBGC on these difficult matters. Now, the law does not provide for that, and I'll get into that later in my argument.
The second question that has to be asked is, what happened to the PBGC? The PBGC was intent upon saving at least one of United's pension plans. It was stated repeatedly in its pleadings with the Court and as recently as a month ago in Bradley Beltz' letters to the Association of Flight Attendants. Mr. Beltz is a signatory to this agreement now. But in his letter to the flight attendants, he stated that he continued to believe that the interest of the participants and the pension insurance program would best be served by the continuance of the AFA plan.
What happened to this belief, to this commitment to salvage at least one of United's defined benefit plans? One need only look to the deposition of PBGC's financial advisor and expert. Mr. Michael Kramer of Greenhill provided an expert report in December of last year in support of the PBGC's position against termination, and in that report, he stated that if the AFA plan were not

terminated, United could still satisfy the credit metrics it believed necessary to obtain exit financing.
The question is posed to Mr. Kramer in his deposition on May 5th. He's asked what changed between December of '04, when you signed your affidavit, your declaration, and now that leaves the PBGC to conclude that the AFA pension plan should be terminated? His response? I think what has changed in terms of the overall situation is there's a negotiated settlement that has been reached between the PBGC and the company with respect to all the issues between the two, that the PBGC is comfortable, and which it believes is acceptable to enter into.
Now, the upshot of all this, of course, is that an agreement was reached, and at that moment, for all intents and purposes, United stopped the Section 1113 process and the PBGC reversed its position that it had been taking throughout this case, and the two parties entered into an agreement.
And this is no different than any other agreement. As with any other agreement, its purpose is to secure certain benefits that a party may not otherwise receive while minimizing certain costs it risks suffering. That's exactly what United

did when it entered into this agreement.

Now, there's been some mention made of what the impact of this agreement is, and I think that the best source of what, in fact, is intended by this agreement and the intended consequence of this agreement will be is presented by United to the creditors committee in a presentation that was given on April 29th .

There, they have, as one of its many slides, or several slides, in a Power Point presentation, a slide that states, "overview of settlement agreement." And it says, under the terms of the settlement, the PBGC agreed to terminate and take over all of United's defined benefit pension plans and waive restoration rights. That is what they agreed to. That is the benefit of United's bargain.

Now, as with any agreement, United had to waive the cost and benefit of this agreement, and it did. Slide five of that same presentation is titled, "cost/benefit analysis." And under the benefits, under the benefits, there is listed the following: Closure and certainty regarding pension obligations. Again, there should be no doubt what this bargain is about or what its intended

consequences are.

Now, finally, if there should be any remaining doubt as to what United assumed would happen here, one need only turn to slide eight of the same presentation in which -- the caption of which is "termination finance." And it says that within 10 to 14 days after May 10th's hearing, PBGC issues notice of determination that AFA and MAPC plans should terminate. Ten to 14 days, Your Honor. There's no mystery here as to what's going to happen.

If Mr. Beltz is a signatory to this agreement, this is a fait accompli, and the deal is done, and our plan will be terminated if this agreement is approved. There should be no doubt about that. And at a minimum, at a minimum, this agreement starts that process, and but for this agreement, that process would not have been undertaken by the PBGC. That is an irrefutable fact.

A billion and a half dollars buys you something, and in this case, it bought the PBGC'S agreement to initiate a process.

Now, what is the primary, though, unstated benefit that United achieves by this agreement? It enables it to do what the law prohibits.

This agreement cannot be reconciled with the plain language of Section 1113(f), with the mandatory processes of Section 1113, or the Railway Labor Act, or the fundamental principle that two parties cannot extinguish the rights of the third party who's not consenting to that agreement.

One has to struggle to understand how United attempts to reconcile those legal requirements with its conduct, and it engages with -- I would say what it engages in can be described as slight of hand advocacy.

What I mean by that is that they, in essence, say now you see a fact, now you don't; now you see a legal obligation, and now you don't. And it's entirely dependent, Your Honor -- as to what is appearing or disappearing is entirely dependent upon the audience to whom it is appealing, what argument it is responding to.

So, for example, with the aircraft lessors, there, it touts the very significant benefits that it will receive by entering into this agreement. And it states on page 30 of its brief, these benefits will render 1113(c) and 4441 distress termination trial unnecessary. A trial on 1113(c) and distress termination would be highly complex and

occur against the backdrop of an intense, emotionally charged atmosphere. Although United believes it would prevail, it would likely face the prospect of continuing appeals and, hence, uncertainty in its plans and exit process. And as I quoted earlier, what they get from this is certainty and closure. That's what they tout when they're trying to appeal to the aircraft lessors.

But when it must address the impact of the agreement upon employees, all of a sudden, the agreement and its intended consequences disappear, and all that is left standing is the PBGC. All one needs to do is look at page 19 of their brief, and it says 1113(f) and the the Railway Labor Act are not implicated, whereas here, United is not acting unilaterally to terminate its pension plans, rather, it is PBGC that would be initiating and United that would be consenting to the 4042 termination process which can proceed, notwithstanding any allegedly contrary provision in a CBA.

That, Your Honor, is a feat, a magical feat that the law does not permit. There is a continuum of conduct here, Your Honor, that they cannot simply eliminate. This process began with their agreement, and it will end with termination.

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And the terminations process is inextricably linked to this agreement.

So I cannot understand, other than through a slight of hand, that they can now, all of a sudden, claim that there's no impact on 1113(f).

So where are we? What has to be done is that there are, from this agreement clear, intended consequences, and they have to be applied to the law.

In the first law, the easiest of many easy tasks here, is to apply the consequences to Section 1113(f).

Now, it's interesting that Mr. Sprayregen or no one else thought it appropriate to read any portion of Section 1113, but 1113(f) is a single sentence, and all that it says is that no provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provision of a CBA prior to compliance with the provision of this section. It's absolute. There are, though, exceptions. It says no provision.

And where are they today? They're here before you, Your Honor, invoking Section 363. Not 1113. 363. They want you to use 363 to trump 1113(f). That is a provision of this title, and that

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is something that 113(f)does not permit. You cannot use another title -- provision of this title to be construed to permit a trustee to unilaterally terminate a provision.

THE COURT: But the pretty obvious question is, is what United is seeking to do now a unilateral termination, or is this not a termination by the PBGC.

MR. CLAYMAN: Your Honor, it's a difference without a distinction or a distinction without a difference. Let's be real about this, Your Honor. The fact of the matter is, they entered into an agreement for one purpose only, one primary purpose: To achieve the termination of pension plans that it was concerned about it could not accomplish through the mandated process of 1113. There is no doubt that this is the beginning of a process that will not have begun but for this agreement. That's the end of the inquiry.

The fact that they found a third party to interfere with those rights is inconsequential. The fact is that when you talk about permitting a trustee to unilaterally terminate, what they're talking about, what they're talking about is the interplay, the relationship between labor and

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management. This statute doesn't contemplate that they can go out and find a third party to basically eviscerate the statute.

The fact is, it will be United that terminates our contract ultimately because it has begun the process. And but for this agreement, that process would not have been undertaken. It is the intended -- clearly the intended consequence of this agreement. And the fact that they found a willing participant to undermine and basically ignore the dictates of 1113, they should not be rewarded for that conduct. The law doesn't permit it. Now, there should be no doubt, again, that consequence of invoking 363 is to basically supplant the entire purpose of 1113(f). That is what will happen.

Now, again, what the company tries to do is to conceal the agreement -- to conceal the effect of the agreement from consideration. It says if the PBGC determines that it is appropriate to terminate a pension plan in accordance with ERISA, 4042, United CBA obligations cannot override ERISA.

Thus, because the agreement merely contemplates, merely contemplates that PBGC and United take actions, ERISA explicitly permits that if ERISA -- explicitly permits -- the agreement

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necessarily does not violate United CBA. That is one of the most tortured interpretations of the law that I've ever read.

Why? Because on page three of their brief, they say exactly the opposite, that the PBGC is required to initiate termination. That's what this is about. There is no doubt that PBGC is required to initiate termination. And there should be little doubt that the expectation that the intended consequence of all that is termination of our plan.

Now, United continues along this road when it tries to escape the requirements of the 1113 negotiations, as well as the Railway Labor Act. Both those statutes provide for a method, a method for a debtor to modify a collective bargaining agreement, and United has violated both.

Now, let me refer, again, to their brief. And this is quite amazing, but what they say is that United acknowledges that the effect of this agreement is that we'll render both the 1113 and pension termination trial unnecessary. But then it says that that is no more than the natural consequence, the natural consequence of the interaction between ERISA, its PBGC initiated

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not part of the consideration received by PBGC.
THE COURT: He doesn't have to stipulate to that. Again, the substantive question that you raised, the one that concerned me, was whether the agreement eliminated AMFA's right to litigate the appropriateness of the termination date. I think it's been established that your right to litigate that question has not been eliminated, that you have the right under Section 1303 to challenge PBGC's termination date.
To the extent that that's an open question, I think Mr. Cohen's comments from the podium today would help any court to resolve it.
MR. SEHAM: One last sentence, if I might. It remains our position that United plays in the role on our statutory right to challenge under 1348 in exchange for consideration received from the PBGC, and the PBGC received a $130 million benefit.
MR. COHEN: Well, Your Honor, really --
THE COURT: That doesn't need to be argued anymore, because to the extent that remains a litigated matter, you haven't received anything. If the right to litigate the matter had been taken away, think that point would have a great deal more for us.
MR. COHEN: This is not the forum for that.

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I would like to just address the five-year prohibition from the PBGC's perspective, and it's noteworthy that everybody was talking about -- well, except Mr. Cummings, that perhaps we got paid too much. We are, even with the face value, even if you look at the face value of the securities we're getting -- we're still going to being taking the largest loss in the agency's over 30-year history from the United plans put together. It's about $5 billion if you take the face value. It's the amount of guaranteed benefits that PBGC will be eating.
And it's appropriate, and I realize that other constituencies are taking haircuts, too, but in that vein, the five-year prohibition from PBGC's perspective is that when companies haven't funded their pension plans and have left us with this kind of liability, that there shouldn't be an immediate second hit. And so, you know, there's no magic to the five years, but it has been done before where there's a prohibition on the establishment of the new defined benefit plan.
THE COURT: I guess the point here is that you're doing something fairly extraordinary in limiting your ability to restore the defined benefit

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pension plans. And one of the elements for not requiring restoration, for continuing to pay out the insured pension benefits that is the agency's responsibility, is that they're not what you would perceive to be an add-on plan. And another defined benefit plan supplementing the insurance payments that you're making would be perceived by the agency as likely to be such an add-on plan.
MR. CLAYMAN: Wrap around, yes, Your Honor. You're absolutely right. It could start to look like the kind of abuse that we saw in the LTV case, for instance, but it's also -- which I think is the point you're making, but also from our perspective, United obviously likes the certainty that they wouldn't have what they call the volatility associated with having defined benefit plans, but from our regulatory viewpoint, it's that we shouldn't be subject to an immediate second hit after we've already taken a large loss from the same plan sponsor.
So that's the government's view on that.
Thank you, Your Honor.
THE COURT: Thank you. I believe that concludes the argument; is that correct?
MR. SPRAYREGEN: Yes, Your Honor.

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THE COURT: What I would like to do is take a brief recess. I want to go down and meet with the people briefly that I was supposed to meet with at 4:00 o'clock, and I'll get back up here as soon as I can.
(Brief recess.)
(Change of court reporters.)
THE COURT: In our pre-trial conference yesterday, I identified four questions that I thought needed to be addressed in passing on the question of whether the proposed agreement between the debtors and the PBGC should be approved. Those questions basically broke down into two categories. One category is whether this agreement satisfied the obligations of any proposed settlement under the Bankruptcy Code. That is to say, did it comply with the law, did it provide adequate consideration to the debtor, was it a benefit to the debtors' estate. Those are questions that we would look at in any bankruptcy settlement.
The other question was whether this settlement was consistent with collective bargaining agreements and the rights of the union members under Section 1113 of the Bankruptcy Code and the RLA. The general settlement requirements, as I think was

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reflected in the colloquy that took place today, have been satisfied by the agreement. We can go through the specific questions that I raised yesterday and that have been addressed in the argument today. But, again, I don't think there is a great deal of doubt about those points.

Is there adequate consideration for the rights that United is giving up? Now, what United is giving up is $1.5 billion face amount in securities and the nonobjection by United to a claim to be calculated by the PBGC under its usual procedures. That's the primary consideration that United is offering.

In exchange, the PBGC is giving up claims that it would have to minimum funding contributions that accrued since the time this case was filed; it's giving up its right to seek payment from each of the debtors jointly and severally; it's giving up its right to assert a setoff against sums owing from the United States Government; it is giving United a procedure that can assure that there will not be restoration of pension plans by PBGC after the effective date of a plan of reorganization; and it is surrendering distribution rights of 45 percent of whatever claim is ultimately allowed on account of

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underfunded pension contributions.

The discussions that have taken place in court today have reflected the belief of the creditors committee and the nonassertion by any other party to the contrary that these tradeoffs are on balance beneficial to the estate, that is to say that what the estate is getting in terms of a surrender of claims in terms of certainty for its future outweigh or at least sufficiently balance what the company is giving up.

As it turns out, the bankruptcy court is directed in making this kind of determination to use a very deferential standard. The court, as the Seventh Circuit's stated in In re American Reserve Corporation, is supposed to compare the settlement terms with the probable cost and benefits of litigation, and only to deny approval of the settlement if the settlement is below the range of likely litigation outcomes. The Seventh Circuit's decision In re American Reserve Corporation, 841 F.2d 159, 161, 1987. And that's a decision that I also discussed in a decision that I wrote in 1999, In re Telesphere Communications, Inc., 229 B.R. 173, 181. So, again, given the tenor of all of the discussions today, it's quite clear that what the debtor is

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giving up is well within that range of potential litigation outcomes.

The minimum funding contribution liability that the debtors face right now approximates a billion dollars if the position of the PBGC were to ultimately prevail in a litigated outcome on that issue alone. It has its other claims unsecured, $5 billion, which could be asserted in various ways against assets of the estate, including funds that are held now by United Loyalty Services, including its offset right, so that what we have here is plainly within the range of litigated outcomes just in terms of the dollar amount.

But when one is considering the potential benefit to the estate here, the dollar amount is not the only thing that's significant. It is the certainty of a resolution allowing for an exit from bankruptcy that has a value that's substantial but not quantifiable. And the settlement has the potential for reducing, if not eliminating, many contested proceedings that would otherwise divert the energy and resources of the debtor.

So on that question, is this something where there is adequate consideration, the answer is plainly, yes, this is something that on that level

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meets the test for court approval.

Now, the next question I had asked in light of arguments that were made in the briefs was whether this agreement would impair the obtaining of exit financing. And, again, I think the colloquy has established that the contrary is the case; that by eliminating an overhang of uncertain liability, this agreement makes exit financing more likely.

Now, to be sure, the debtors' requirement to issue the securities, a substantial amount in securities, will have some impact on exit financing. But those securities were structured in such a way as to have a minimum impact on exit financing to require no cash outlays from the debtor for a substantial period of time allowing a reorganization to have a greater chance of being successful.

Moreover, the agreement provides, as clarified in the colloquy, that to the extent that the precise nature of the securities does create some obstacle to exit financing, that those securities can't have their terms modified. So, again, that issue I think is not an obstacle to approval of the settlement.

The 45 percent of allowed unsecured

claim that is proposed by this agreement to be distributable by the debtor, or at the option of the debtor, excuse me, is also not an obstacle because to the extent that that provision might contradict other requirements for confirmation of a plan, all parties in interest will have the opportunity to object to any proposed distribution of the 45 percent by the debtor, at the direction of the debtor, prior to the time that any such distribution would take place.

And to the extent that the court would find that there would be any violation of the Bankruptcy Code's provisions or any other provision of law in what's proposed by the debtor, the distribution would not be allowed. So that also has been removed as an obstacle.

Now, finally, while we're still talking about the general terms that have to be met in order for the court to approve the proposed settlement, I need to address the question of whether the settlement imposes limits on rights of third parties. This comes under the rubric of what was argued as a sub rosa plan.

The rights of all interested parties in a bankruptcy estate are affected by a plan of reorganization. And courts have protected parties

from having their rights affected prior to a plan of reorganization by agreements that the debtor enters into not affecting those parties. To some extent this is what I had earlier found was a problem with the originally proposed agreement between the debtors and the pilots. It seemed to me that that originally proposed agreement had the effect of unduly impacting the rights of other parties.

Now, in several respects concerns were raised, were raised today primarily by Ms. Levine, about whether this particular proposal would unduly impact the rights of third parties. And in each case the colloquy that followed from those potential problems being pointed out I believe has resolved the potential issue.

Perhaps the only question that remained is whether it was appropriate for the debtor to agree with the PBGC not to propose the establishment of a defined benefit plan for five years after termination of the existing plans. And I think what was uncovered in the course of the colloquy is that that was a provision that was essential to secure the benefit of not having PBGC's assertion of a right to have restoration take place. And, moreover, what we've clarified is that is

something that has a fixed five-year, not ten-year period, and would not prevent the negotiation of such a plan being put into effect at the termination of that five-year period.

So with all of those clarifications, I think that the agreement does not unduly affect the rights of third parties not participating in the negotiation of the agreement.

That leaves the central question, and the question that involved the vast bulk of the argument, namely, does this agreement violate the collective bargaining agreements, does this agreement violate the Railway Labor Act or Section 1113 of the Bankruptcy Code. Now, in addressing that question, I think it's important to observe that both the Bankruptcy Code and ERISA are very protective of collective bargaining rights. Section 4041 of ERISA, Section 4041(a)(3), prohibits the PBGC from terminating a pension plan at the request of an employer if termination would violate the terms of a collective bargaining agreement.

Section 1113 of the Bankruptcy Code does not allow a collective bargaining agreement to be rejected unless the debtor bargains in good faith to obtain modifications that are necessary to permit

a reorganization, and that despite that good faith negotiation, an agreement for such modification cannot be reached.

So plainly a unilateral act by the debtor to terminate a pension plan that's created by a collective bargaining agreement is not possible either under ERISA or under Section 1113 of the Bankruptcy Code. And the obvious public policy that underlies those provisions is the importance of honoring collective bargaining agreements.

However, there is a countervailing public policy, and that is in protecting the solvency of the pension benefit guarantee system. Now, most people I think in this room understand the general operation of the pension benefit guarantee system set up under ERISA. But just in case there is someone who doesn't know that or isn't familiar with it, let me just outline it in the very broadest terms.

Every sponsor of a defined benefit pension plan, a plan that proposes to pay out in defined terms certain benefits every month, the kind of pension plan that someone can rely on that doesn't depend on how well the investments do, that simply guarantees a certain level of income, those defined benefit pension plans were recognized by Congress

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decades ago to be vulnerable to the failure of the company that sponsors them. If a company goes broke, its promises to pay defined benefits can be worthless, and the employees who were relying on those pension plans can be left with no resources at all.

To deal with that problem, Congress passed ERISA. ERISA provides that any sponsor of a defined benefit plan is required to pay an insurance premium to the Pension Benefit Guaranty Corporation, and the Pension Benefit Guaranty Corporation uses those premiums to guarantee payment of pension benefits not at the level defined by the plan, but at a level defined by the statute in the event that a company's plan fails.

Now, as Mr. Cohen was arguing earlier, that puts a very grave responsibility on the PBGC. It has to make sure that the money that it collects in premiums from the sponsors of plans will be sufficient to cover its statutory obligation to make benefit payments to the recipients of plans that fail. It has to protect its system to allow it to respond to the needs of people who would otherwise get no pension benefits when their company was unable to pay them.

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That need requires the PBGC at times to seek to terminate a pension plan. Why? Because if the pension plan keeps paying out its benefits while it's not receiving contributions from its company sufficient to meet its obligations, the potential liability of the pension benefit guarantee system can grow greater and greater.

As the benefits -- as the assets of the plan are exhausted and no new contributions or inadequate contributions come in, the liability of the PBGC becomes greater and greater. The claim on its limited resources from collecting these insurance premiums becomes greater and greater. And it is a matter of very widespread understanding, something that can be read in the paper virtually any day, that the PBGC faces a very significant shortfall in the funds that it has available to deal with the potential of underfunded pension plans across the country.

This role of the PBGC in needing to protect the pension benefit guarantee system from failing plans is reflected in a provision of ERISA that allows the PBGC to itself initiate termination of a plan, this is what's called involuntary termination, even though that plan is covered by a

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collective bargaining agreement. And if PBGC determines to seek involuntary termination of the plan and the plan sponsor does not object, then that plan can be terminated without any court proceeding.

The impact of this statutory construct is to place the need of maintaining the solvency of the pension benefit guarantee system ahead of the need to enforce collective bargaining agreements. That's a determination that Congress made. That's not necessarily the interpretation that anyone in this room would have made. The decision they would have made is a policy matter, but that was Congress' determination. Whether this is the right policy or not is something that was determined by Congress. The court's job is to enforce the law as Congress wrote it.

Now, as to whether this is the correct interpretation of the law, there really is very little question. This precise issue of whether the PBGC has the right to obtain an involuntary termination of a plan with the consent of the plan sponsor without a prior court ruling was addressed by the Second Court of Appeals in the Jones & Laughlin case that's been referred to several times in the course of the argument today. The formal name of the

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case is In re Jones & Laughlin Hourly Pension Plan, reported at 824 F.2d 197, a 1987 decision of the Second Circuit.

That case presented precisely this question. This was a proceeding that arose in the first LTV Steel bankruptcy. The PBGC made a determination after the plan sponsor stopped making minimum funding contributions that there should be an involuntary termination.

The union that was affected by that decision objected and said that this could not be done without a court hearing to determine the sorts of things that are covered by Section 1113, one would assume, and the necessity for the involuntary termination. The court, looking at the language that Congress had adopted in ERISA, concluded, and I believe correctly for a number of good reasons, that that was not required. A court hearing was not required, that Congress had given the PBGC the power to effect this termination without a prior court opinion, prior court review, when management had consented. The Jones & Laughlin case has been cited numerous times. Its holding has never been questioned. And I believe it's the correct interpretation of the law that Congress had enacted.

The result then is that the PBGC may terminate a plan in order to protect the pension benefit guarantee system with the consent of the plan sponsor without a court hearing even though that overrides the provisions of a collective bargaining agreement.

Now, I was concerned that that could be an unchecked power, that somehow the debtors or the PBGC might be arguing that any time management and the PBGC get together and decide that a pension plan ought to be terminated that the employees are left with no remedy, the unions have no voice, no opportunity to get judicial review of that decision. That's why we had the lengthy discussion that we did have regarding Section 1103 of ERISA.

I came upon that section of ERISA by reading the Jones & Laughlin decision of the Second Circuit because the Second Circuit also did not want to be in a position of denying due process.

The Second Circuit in that Jones & Laughlin decision recognized that the right of employees to receive the benefits that were defined by their pension plans was an important property right that should not be taken away without due process. But in looking at the various elements that

defined due process, the court specifically pointed to Section 1303 of Title 29, 4003 of ERISA, for the right that any aggrieved party has to bring the PBGC into court to challenge the propriety of action that the PBGC has taken under the statute. This is critically important here.

Brought down to its essentials, many of the parties objecting to the proposed settlement between United and the PBGC are saying that the PBGC is not going to be acting under its statutory power to terminate a pension plan because the continued existence of the plan would threaten the solvency of the pension benefit guarantee system, that this plan would be likely to create losses for PBGC if it were allowed to continue, but that PBGC is agreeing with the debtor to terminate a plan so that PBGC can augment the solvency of the system by receiving funds that it might otherwise not receive.

The information that's been presented to this court would not support that interpretation. But the important thing is that if the agency were to act in an inappropriate way, if it were to take action that's not authorized by the statute in seeking involuntary termination of a pension plan, the agency would be subject to a lawsuit under

Section 1303 to have its decision reviewed by a court. And if the agency were acting arbitrarily, contrary to its statutory duties, that action could be undone. That's critical here.

This settlement does not itself terminate the plan, any plan. This settlement provides that the PBGC will go through its administrative procedures to come to a conclusion as to whether the plans in question here ought to be involuntarily terminated.

Now, as Mr. Sprayregen said at the outset, it is the expectation of the debtors that that decision will be in favor of involuntary termination. It would be the expectation of the debtors because the debtors have said for months that they believe that these plans cannot be maintained without generating losses. So PBGC may very well come to the conclusion that the debtors expect. The important thing is that if the unions believe that that is an arbitrary decision not consistent with PBGC's statutory authority, PBGC's action is reviewable in court.

What that means for the terms of the settlement that's before this court today is that this settlement does not violate the law. The debtor

is not unilaterally terminating a pension plan. PBGC is agreeing under this agreement to exercise its statutory obligation to determine whether a pension plan ought to be involuntarily terminated. And PBGC, in exercising that responsibility, will be subject to judicial review, just as United would not be violating Section 1113 had it not talked to the PBGC about the possibility of an involuntary termination. So it did not violate 1113 when it did talk to the PBGC about an involuntary termination. United's talking to the PBGC could not unilaterally terminate a pension plan. Only the PBGC's decision could do that.

And there is nothing in the Bankruptcy Code that would prevent a debtor from consulting with a regulatory agency about the proper exercise of its responsibility. And, as I said before and I will say one more time, the agency retains its statutory obligation to exercise its discretion appropriately.

Now, does this limit the unions and their employees to the opportunity to challenge any decision that the PBGC might make? No. There are other remedies besides. And in that connection, the actions of the pilots union provides something of a guideline for the sorts of things that can be done.

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A plan of reorganization still has to be negotiated. Each of the unions on behalf of their members are going to have claims against the debtors for wages and benefits that had to be surrendered in conjunction with prior agreements and may be surrendered or lost in connection with activities to take place in the future.

Each of those unions will have claims that have to be treated in the plan. Each of those unions will have opportunities to engage in further collective bargaining in the future. The debtor has no right to dictate the terms of its plan, no right to dictate future collective bargaining agreements. Those are matters to be determined. And the equitable considerations that would otherwise come to play in both a plan and in future collective bargaining agreements certainly will include the loss of pension benefits that may be accompanied by an involuntary termination.

Now, obviously this is a complex matter. But I think the important thing to keep in mind is this: In a bankruptcy proceeding like the one that is taking place here, and, indeed, in almost any bankruptcy proceeding I've ever dealt with, no one ever is able to come out with everything they

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would have had had there not been a bankruptcy. Had this company not been involved in a situation where it could not meet all of its obligations, we wouldn't be in a situation like the one that we're in now.

Bankruptcy generally, and in this case in particular, involves choosing the least bad among a number of unfortunate choices. The least bad of the unfortunate choices here has got to be the one that keeps an airline functioning, that keeps people employed, that pays creditors the most they can be paid, and those creditors, again, include the employees in a very major way, as an alternative to what certainly is the worst choice, a shutdown of a company that results in a loss of employment and a loss of benefits and pay and payment of deserving creditors across the board.

There is a great deal of work yet to be done to negotiate a fair outcome for all of the parties involved in this bankruptcy case and particularly for the employees who have sustained this enterprise throughout the bankruptcy proceeding. My hope is that this agreement today can be an ingredient that results in that outcome. But that will depend on the choices that are made by any number of parties.

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The decision that I have to make is one that's dictated by the law. As I've just outlined, the legal requirements for approval of this agreement have been met. The agreement will be approved. That leaves completely open what decisions that the parties make not dictated by the law. And my hope is that those decisions will be wise ones.

Now, having rendered that decision, I'll enter an order consistent with it. That order is going to have to incorporate all of the provisions that were discussed in colloquy today.

And the last order of business will be to discuss what takes place tomorrow in light of this ruling.

MR. SPRAYREGEN: Thank you, Your Honor. We'll probably need a little time to address the order, and maybe we can bring it tomorrow prior to the trial. Mr. Dimitrief is going to address the pre-trial issues.

THE COURT: Okay.

MR. DIMITRIEF: Good afternoon, Your Honor. Alex Dimitrief on behalf of the debtors. In light of the court's ruling, and consistent with the comments that the court just made, as for the trial for tomorrow, we would ask leave to withdraw without

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prejudice our pending 1113(c) motion to reject the AFA contract on the grounds it is no longer necessary to proceed against the AFA. We also believe that the scope of the trial on the pending motions to reject the IAM and AMFA agreements is greatly narrowed so as not to have to address pension issues any longer pending proceeding with the settlement agreement with the PBGC.

That, I believe, subject to confirmation from counsel for the IAM and AMFA, not only simplifies the trial, but also simplifies the pre-trial conference because a great number of those motions were primarily directed towards AFA-raised issues. So, for example, Your Honor, the motion that we had for leave to use the bridge report and tentatively designate Mr. Schneling as a witness, we would withdraw that issue at this point. And subject to confirmation by counsel for IMA and AMFA that they do not intend to use any of the evidence that the balance of our motions were addressed to, I believe those can be withdrawn as well. But that would be our position, sir. And we think it does greatly simplify things.

I'm prepared, if you would like, to talk about what I would think a schedule would be at

this time, depending on the court's preference.
THE COURT: I think it might make more sense for you to consult with counsel for IAM and AMFA and come back to me tomorrow morning because the alternative is for basically a discussion of that sort to take place on the record, and I think that's likely to be less productive.
MR. DIMITRIEF: Very well, Your Honor. What time would you like to see us?
THE COURT: You can't come -- well...
MR. DIMITRIEF: Right now I believe we're scheduled to appear at 2:00.
THE COURT: You are. You could come in at 1:30. We can get a little bit of a head start that way.
MR. DIMITRIEF: Thank you, Your Honor.
THE COURT: And I should tell all of the parties that we're only going to have Friday morning. Friday afternoon I've got other obligations that I'm going to have to attend to.
MR. DIMITRIEF: Okay. Thank you, Your Honor. I think we will try to meet with counsel for the IAM and counsel for AMFA and try to address the uncertainties or open issues that have been raised by where we stand right now, and hopefully we'll all be

on the same page tomorrow when we appear at 1:30.
THE COURT: Okay. I think that will be all for -- oh, yes, yes. Ms. Williams was able to obtain a larger courtroom for the proceeding tomorrow afternoon. That will be courtroom 1903.
THE CLERK: It's the same size as this one.
THE COURT: I mean larger than my courtroom on the 7th floor. It will be the same size as this courtroom.
Now, we were not able to get an overflow courtroom. So if there are IMA or AMFA members who want to appear for the proceeding tomorrow, you have to realize that there is some chance that you might not be able to get into the courtroom. We really have done everything we can to try to get as many people able to be in a position to hear the proceedings as possible. But tomorrow the best we can do is to get one courtroom of this size.
And I think with that, we'll adjourn for the day.
MR. DIMITRIEF: Thank you, Your Honor.
MR. SPRAYREGEN: Thank you, Your Ho
(Which were all the proceedings had in the above-entitled cause, May 10, 2005.)

I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE. NOR.